FILED
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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Conduct a Comprehensive Examination of Investor Owned Electric Utilities' Residential Rate Structures, the Transition to Time Varying and Dynamic Rates, and Other Statutory Obligations.	Rulemaking 12-06-013 (Filed June 21, 2012)

COMMENTS OF THE UTILITY REFORM NETWORK
ON THE PROPOSED DECISION ON THE REQUIREMENTS OF SECTION 745

TURN
THE UTILITY REFORM NETWORK
Lower bills. Livable planet.

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August 31, 2016

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**COMMENTS OF THE UTILITY REFORM NETWORK
ON THE PROPOSED DECISION ON THE REQUIREMENTS OF SECTION 745**

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, the Utility Reform Network ("TURN") respectfully submits these Opening Comments on the Proposed Decision of Administrative Law Judge ("ALJ") Jeanne McKinney "On the Requirements of California Public Utilities Code §745 for Default Time-of-Use (TOU) Rates for Residential Customers" (the "Proposed Decision" or "PD"), mailed on August 11, 2016 in Rulemaking 12-06-013.

1 INTRODUCTION AND SUMMARY OF RECOMMENDED CHANGES

TURN commends ALJ McKinney for providing clear and actionable definitions for implementing the Legislative requirements of AB 327 and SB 1090 that direct the Commission to evaluate the impacts of time of use ("TOU") rates prior to implementing default residential TOU rates. However, the definition of "economically vulnerable" customers adopted by the Proposed Decision must be revised to avoid legal error. Defining "economically vulnerable" customers as only those utility customers who are already enrolled on the California Alternate Rates for Energy ("CARE") or the Family Electric Rate Assistance ("FERA") programs violates the legislative goal of AB 327, conflicts with facts and produces unreasonable results. The Commission should first evaluate the impacts based on pilot results for a range of customer income levels and determine who is "economically vulnerable" based on consideration of bill impacts and energy burdens on different income groups. At a minimum, the Commission must consider all customers who are *eligible* for the CARE/FERA programs to be economically vulnerable.

2 THE DEFINITION OF "ECONOMICALLY VULNERABLE" CUSTOMERS MUST BE EXPANDED BEYOND JUST THOSE CUSTOMERS ALREADY ENROLLED IN THE CARE OR FERA PROGRAMS IN ORDER TO COMPLY WITH LEGISLATIVE INTENTAND AVOID UNREASONABLE OUTCOMES

2.1 Summary

AB 327 (Perea, 2013) adopted Section 745(c)(2), which requires the Commission to "ensure that any time-of-use rate schedule does not cause unreasonable hardship for senior citizens or economically vulnerable customers in hot climate zones." The PD provides useful guidance to the utilities and interested parties by defining the relevant terms of this section. TURN supports most of the discussion in the PD.

However, the PD agrees with the utilities that the term "economically vulnerable customers" encompasses only "customers who are *enrolled* in CARE or FERA."[1]The PD argues that this definition fulfills "the intent of the Legislature" and that alternative definitions "would be difficult to implement."[2] The PD concludes that the Commission need only study "the impact of TOU rates on CARE and FERA customers" to determine whether these customers experience unreasonable hardship. The PD notes that "the results of the opt-in pilots may suggest that a lower income threshold be used to define 'economically vulnerable'," and cites to TURN's suggestion that particular attention should be focused on customers with incomes less than 100% of the Federal Poverty Guidelines.

The conclusion of the PD is not consistent with Legislative intent and constitutes legal error. There is no administrative barrier to implementing a broader view of "economically vulnerable" based on the pilot results. At a minimum, the PD should be revised to consider all CARE/FERA-eligible customers to be "economically vulnerable."

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[1] PD, p. 8 (emphasis added); See, also, PD, Conclusion of Law No. 1, p. 33.
[2] PD, p. 7-9.

2.2 The Legislature's Use of the Term "Economically Vulnerable" in the Same Bill that Defined Subsidy Levels for CARE Customers Means that the Legislature Meant that Term to Signify More Than Just "CARE Customers"

The PD's conclusion that only customers who are "enrolled" on the CARE or FERA program are "economically vulnerable" is contrary to Legislative intent.

Any interpretation of a statutory term starts with consideration of the plain and ordinary meaning of the statutory language.[3] If the plain meaning is unambiguous, then the administrative agency should conform to the specific language unless such an interpretation would result in an outcome that defeats the legislative intent or produces an absurd result.[4] If a term of the law is ambiguous, an administrative agency should interpret the term so as to best effectuate the "intent of the Legislature so as to effectuate the purpose of the law."[5]

In this case, the term "economically vulnerable" is not subject to clear and unambiguous definition, so that the Commission must adopt a definition that best fulfills the Legislative intent. Determining Legislative intent is accomplished by looking to extrinsic evidence associated with the specific statute and by using accepted rules of statutory construction to interpret a provision.[6]

In this case, there is little extrinsic evidence in the various bill analyses to clarify the term economically vulnerable. However, the Commission should use the well-recognized rule of statutory construction that when the Legislature uses different terms in different sections of a statute or related statutes, it should be presumed that such a difference is intentional and meant to represent different things.[7]

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[3] *Herman v. Los Angeles County Metropolitan Transportation Authority* (1999), 71 Cal.App.4th 819, 825.
[4] *People v. Rizo* (2000), 22 Cal. 4th 681, 687. See, D.12-05-035, p. 14.
[5] *California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997), 14 Cal.4th 627, 632.
[6] See, for example, D.03-04-058, p. 6.
[7] For example, *Ford Motor Co. v. County of Tulare*, 145 Cal. App. 3d 688, 691-692.

The 200% eligibility criterion for CARE is statutorily-mandated by §739.1, which predates the passage of AB 327.[8] The Legislature was aware of the CARE program and its eligibility rules when it enacted § 745 in AB 327. Another portion of AB 327 modified § 739.1(c) to explicitly define the amount of the CARE discount. Thus, the same law – AB 327 – already specifically addressed elements of the CARE program. Indeed, several bill analyses discuss the CARE and TOU sections of the bill in consecutive paragraphs, demonstrating the fact that the Legislature was well aware it was using different terms within the very same bill.[9] The Legislature could have referenced the CARE eligibility criterion if it had intended to limit consideration of unreasonable hardship in § 745 only to CARE customers.

2.3 Defining the Term "Economically Vulnerable" to Mean Just Enrolled CARE/FERA Customers Produces Absurd Outcomes Contrary with the Intent of the Statute

Limiting the analysis of unreasonable hardship only to CARE and FERA *enrolled* customers would result in an absurd outcome that would thwart the Legislative intent to examine the impact on all "economically vulnerable" customers. Customers may be enrolled in the CARE program with incomes below 200% of the Federal Poverty Level ("FPL"), and in the FERA program with incomes below 250% of the FPL. Not all CARE or FERA-eligible customers are enrolled in the program.[10] Potentially 40% of CARE-eligible customers with incomes less than 100% of the FPL who are located in SCE's hot climate zones are not enrolled in CARE.[11]

[8] The 200% eligibility criterion was added by SB 695 in 2009.
[9] See, for example, Assembly U&C Analysis, As Amended Sep. 6, 2013, p. 5 (included as Appendix B)
[10] In 2012 approximately 95% of eligible customers were enrolled in CARE. Evergreen Economics, "Needs Assessment for the ESA and CARE Programs, Volume 1," December 16, 2013, p. 3-8.
[11] Nexant, Inc., "Time-of-Use Pricing Opt-in Pilot Plan," December 17, 2015, p. 39. (Appendix 1 to ALJ Ruling of January 15, 2016).

While some CARE/FERA-eligible customers may have chosen not to enroll based on an actual lack of need for bill subsidies, it is likely that most are not enrolled due to a lack of awareness, language barriers, or other difficulties preventing enrollment. It is not logical or reasonable to conclude that a CARE-eligible customer with an income of less than 100% of the FPL is less "economically vulnerable" than CARE-enrolled customer with an income of 200% of the FPL, or that the Legislature did not intend to consider the impact of TOU rates on those lower income customers just because they had failed to enroll in the CARE or FERA program.

Moreover, it is quite possible that even customers who are not eligible for CARE/FERA may be economically vulnerable. In our brief, TURN cited to evidence showing that customers with incomes just above 200% of the poverty level may still be severely impacted by increased bills and increased bill volatility.[12] Indeed, these customers are often ineligible for a host of federal or state assistance programs, and may thus be especially vulnerable to rising costs.[13] Thus, there is no firm basis for concluding that the Legislature intended the CARE eligibility criterion to be the limiting cutoff for consideration of potentially economically vulnerable customers. As discussed below, the Commission should evaluate the evidence that will become available in the future to define economically vulnerable based on accepted criteria such as bill impacts and energy burden.

2.4 The Potential Administrative Burden of Determining Customer Income Levels Is Not Insurmountable and Does Not Warrant Ignoring Statutory Requirements

The PD claims that alternative definitions "would be difficult to implement." This claim is not factually correct, and is disproven by other portions of the PD.

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[12] See, for example, D.06-10-044, p. 6-7. See, also, United Way, *Overlooked and Undercounted 2009*, Executive Summary, p. x.
[13] For example, programs such as food stamps, federal housing assistance, SSI, WIC and others have income eligibility levels between 130% and 200% of the federal poverty guidelines.

The claim is factually incorrect because the utilities intend to collect income information from all pilot participants, irrespective of whether they are enrolled in CARE/FERA or not.[14] This data can be used to evaluate potential impacts on customers with different income levels, irrespective of whether they are enrolled in a utility discount program or not.

More importantly, the fact that certain information may be administratively difficult to collect is no basis for ignoring explicit statutory requirements. Indeed, the PD itself dismisses almost identical arguments by the utilities that it would be difficult and costly to identify the presence of seniors in a household.[15] The PD explains that § 745(c)(2) requires evaluation of unreasonable hardship on "senior citizens," and the PD correctly concludes that the utilities will have to follow the law, even though they do not presently track this information. The PD thus orders the utilities "to implement a procedure obtaining and tracking this information" and to collaborate with the TOU working group "to develop reasonable rules for this process."[16]

To the extent that the Commission is concerned about any future collection of data regarding income levels from customers other than pilot participants, it should similarly order the utilities to implement a procedure for obtaining such data, or to use proprietary databases to estimate household income levels and seek additional supporting data if necessary.

2.5 The Commission Should Adopt a Broader Definition of "Economically Vulnerable" Based on Data Collected in the Pilots, and at a Minimum Including All CARE/FERA Eligible Customers

The Proposed Decision should be revised to more closely comport with the Legislative intent to evaluate the impact of TOU rates on all economically vulnerable customers in hot climate zones.

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[14] For example, Nexant, Inc., "Time-of-Use Pricing Opt-in Pilot Plan," December 17, 2015, p. 39-40 and Table 3-5. (Appendix 1 to ALJ Ruling of January 15, 2016.)
[15] PD, p. 10-11.
[16] PD, p. 11.

TURN recommends that the Commission take a practical approach and use the same indicators it has relied upon historically to evaluate which customer groups are "economically vulnerable." Metrics such as energy burden, energy insecurity and disconnection rates have been used by the Commission to measure a customer's economic vulnerability to electric rates.[17] Those measures should all be evaluated using the data from the TOU pilots, and the results can be used to determine which income groups may be "economically vulnerable" and/or suffer unreasonable hardship due to the imposition of default TOU rates.

If the Commission determines that it is impossible to evaluate economic vulnerability for groups at different income levels, then at a minimum the Commission should find that all customers **eligible** for the CARE tariff or FERA program are economically vulnerable. There is no reasonable basis for assuming that a customer at 100% of the federal poverty level is not economically vulnerable just because that customer has not completed the process to enroll in the CARE program.

TURN appreciates that such a definition may result in a different ultimate approach to addressing unreasonable hardship. For example, if the Commission determines that any customer with an income below 200% of the FPL should not be defaulted onto a TOU rate due to unreasonable hardship, the utilities could automatically default all CARE customers to a non-TOU rate. The utilities would not be able to automatically exclude customers qualifying non-CARE customers from the default TOU rate. However, the utilities could take affirmative steps to ensure that all customers are informed that a different default rate applies depending on one's income level. Alternatively, the utilities could even default customers onto different rates based

[17] Evergreen Economics, "Needs Assessment for the ESA and CARE Programs, Volume 1," December 16, 2013, Sec. 3.4.

on census tract income data. Such implementation issues should be addressed at a later date. The priority at this stage is to ensure compliance with the Legislature's directive to ensure that any TOU rate does "not cause unreasonable hardship on for senior citizens or economically vulnerable customers in hot climate zones."

August 31, 2016

Respectfully submitted,

___________/S/___________
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APPENDIX A

TURN's Recommended Changes to the Findings of Fact, Conclusions of Law, and Ordering Paragraphs
(Deletions in ~~strikethrough~~, additions underlined)

Citation	Change or Add:
COL 1	The term "economically vulnerable customers" includes more than just persons enrolled in the CARE or FERA programs, and will be defined using metrics of vulnerability and the results of the pilot programs.
OP 2	"Economically Vulnerable Customers" are at least those customers eligible for California Alternate Rates or Energy or Family Electric Rate Assistance, but may also include customers with higher income levels.

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APPENDIX B

Assembly U&C Analysis, As Amended Sep. 6, 2013

Date of Hearing: September 11, 2012

ASSEMBLY COMMITTEE ON UTILITIES AND COMMERCE
Steven Bradford, Chair
AB 327 (Perea) – As Amended: September 6, 2013

SUBJECT: Electricity rates: net energy metering: California Renewables Portfolio Standard Program.

SUMMARY: Modifies statutory requirements specific to residential rate design applicable to the customers of Investor Owned Utilities (IOUs); modifies the provisions applicable to Net Energy Metering, allows the California Public Utilities Commission (PUC) to require procurement beyond the current 33% renewable procurement mandate; requires IOUs to develop and implement distributed generation resources plans. Specifically, this bill:

a) Requires the California Public Utilities Commission (PUC), when it approves changes to electric service rates charged to residential customers, to determine that the changes are reasonable, including that the changes are necessary in order to ensure that the rates paid by residential customers are fair, equitable, and reflect the costs to serve those customers.

b) Requires PUC to consider specified principles in approving any changes to electric service rates.

c) Requires PUC to report to the Legislature its findings and recommendations relating to tiered residential electric service rates in a specified rulemaking by January 31, 2014.

d) Recasts and revises limitations on electric and natural gas service rates of residential customers, including the rate increase limitations applicable to electric service provided to California Alternate Rates for Energy (CARE) customers.

e) Requires the IOUs to provide annual distributed energy resource plans and for the PUC to approve those plans, if it finds them reasonable, in each IOU General Rate Case.

f) Revises the current Net Energy Metering (NEM) Statute to specify the maximum program capacity for customers in IOU service areas, require the PUC to develop a new NEM program by July 2015 and establish a transition to the new NEM program by 2017. The new NEM program is to be based on electrical system costs and benefits to nonparticipating ratepayers and remove both the total system capacity cap and the 1 Megawatt project size limit. Existing NEM customers will be transitioned for a length of time to be determined by the PUC by March 2014.

g) Provides the PUC with authority to require IOUs to procure renewable energy generation above that which is required in the 33% Renewable Portfolio Standard.

h) Authorizes the PUC to approved fixed monthly charges no greater than $10 for residential customers and $5 for low-income customers beginning in 2015 and may allow a cost of living adjustment beginning in 2016.

i) Specifies discounts for low-income customers are not to exceed 30% to 35% of the average non-low-income customer.

j) Prohibits the CPUC until January 1, 2018 from authorizing or imposing by the default rate schedule for residential customers based on Time of Use and establishes provisions to protect senior or other vulnerable customers, in hot climate zones, from unreasonable hardship

k) Technical amendments to the provisions related to residential electricity rate reform.

EXISTING LAW

1) Requires the PUC to allocate a 'baseline quantity of electricity based on 50% to 60% of average residential electricity consumption for customers served with both gas and electricity or 60% to 70% for all electric residential customers and to take climatic and seasonal variations into account. (Public Utilities Code 739(a)(1)

2) Requires the PUC to set rates for the baseline quantity to be the lowest rate and to allow increasing rates for usage in excess of the baseline quantify. (Public Utilities Code 739(d)(1))

3) Requires the PUC to avoid excessive rate increases for residential customers and to establish an appropriate gradual differential between the rates for the respective blocks of usage (Public Utilities Code 739(d)(1))

4) Requires the PUC to retain an appropriate inverted rate structure for residential customers and that if the PUC increases baseline rates revenues resulting from those increases they are to be used exclusively to reduce nonbaseline residential rates. (Public Utilities Code 739.7)

5) Allows the PUC to make higher allocations for persons with medical needs, such as emphysema, pulmonary patients, or persons on life-support equipment. (Public Utilities Code 739(c))

6) Restricts the PUC from approving IOU rates that increase the residential rates for electricity usage up to 130 percent of the baseline quantities, by the annual percentage change in the Consumer Price Index from the prior year plus 1 percent, but not less than 3 percent and not more than 5 percent per year. The annual percentage change in the Consumer Price Index is calculated using the same formula that was used to determine the annual Social Security Cost of Living Adjustment on January 1, 2008. This restriction sunsets January 1, 2019. (Public Utilities Code 739.9(a))

7) Restricts approval of mandatory or default time-variant or real time pricing, or critical peak pricing for residential customers and establishes these as opt-in programs only. In addition, requires that customers be provided with one year of data and one year of bill protection and caps billings to no more than they would otherwise have been under the customer's previous rate schedule. Also exempts medical baseline customers. (Public Utilities Code 745)

8) Further restricts rates charged residential customers for electricity usage up to the baseline quantities, including any customer charge revenues, to not exceed 90 percent of the system average rate prior to January 1, 2019, and not exceed 92.5 percent after that date. (Public Utilities Code 739.9(b))

9) Establishes a program of assistance to low-income residential customers with annual household incomes no greater than 200% of federal poverty guidelines which reflects discounts based on level of need and allows limited rate increase of up to 3% annually, subject to limitations. CARE rates cannot exceed 80% of the corresponding rates charged to non-CARE customers (excluding non-bypassable charges). (Public Utilities Code 739.1(b)(4)

10) Allows low income customers to be exempt from paying Department of Water Resources bond charge imposed pursuant to Division 27 (commencing with Section 80000) of the Water Code, the CARE surcharge portion of the public goods charge, any charge imposed pursuant to the California Solar Initiative, and any charge imposed to fund any other program that exempts CARE participants from paying the charge. (Public Utilities Code 739.1(g), 2851(d)(3), 379.6(h)

11) Establishes a program that allows bill credits for energy not consumed on site for customers who self-generate electricity from specified renewable energy technologies which can be applied against both the generation and non-generation charges on the customer's bill.(Public Utilities Code 2827)

12) Establishes a program that allows bill credits for customers using specified fuel cell electric generation technology. (Public Utilities Code 2827.10).

13) Exempts customers using specified fuel cell technologies from nonbypassable charges. (Public Utilities Code 371)

14) Provides a discounted rate for natural gas purchases from IOUs that sell natural gas to customers using specified fuel cell technologies. (Public Utilities Code 379.8)

15) Establishes a requirement for utilities (IOU and publicly owned) to procure electricity from specified renewable energy technologies to achieve a generation portfolio that is 33% renewable by 2020. (Public Utilities Code 399.11 et seq).

16) Requires the PUC to publish a study, biennially, evaluating the impacts of distributed generation on the state's distribution and transmission grid. (Public Utilities Code 321.7)

FISCAL EFFECT: According to the Senate Appropriations Committee:

- Annual costs of approximately $116,000 from the Public Utilities Reimbursement Account (special) for the workload involved in conducting a triennial assessment of the needs of low-income electricity and gas customers.
- Cost pressures in the millions to tens of millions of dollars to the General Fund and various special funds to the state as a ratepayer should the CPUC exercise the authority in this bill to raise renewable energy procurement requirements.
- One-time costs of at least $120,000 from the Public Utilities Reimbursement Account for the development of a new NEM standard contact and tariff, a transition period for existing NEM customers, and the eligible period for a fuel-cell standard tariff.
- One-time costs of at least $120,000 and ongoing costs of up to $120,000 from the Public Utilities Reimbursement Account to review distribution resource plans and to establish criteria on evaluating the success of investments made pursuant to such a plan.

- Cost pressures in the hundreds of thousands of dollars to the General Fund and various special funds to the state as a ratepayer to the extent that the distribution resources plan proposals lead to necessary infrastructure spending that will be paid by the ratepayers.

COMMENTS:

1) Statement. "The energy crisis is long over, but laws meant to protect residential rate users are now preventing CPUC from governing the rate structure and making necessary changes for the thousands of middle to low income families struggling to pay high energy costs. For example, the gap between Tier 2 and Tier 5 increased from 5 cents per kWh to 16 cents per kWh today. Absent rate reform, the gap between Tier 2 and Tier 5 will double to nearly 29 cents per kWh by 2022 causing tens of thousands of customers to pay rates significantly higher than the actual cost of electricity. Without legislative changes, the CPUC has only very limited ability to fix this unfair residential electric rate structure."

2) Background. During the 2000-2001 energy crisis, AB 1 X1 (Keeley), Chapter 4, Statutes of 2001, protected ratepayers from rampant price fluctuations due to a dysfunctional wholesale electricity market. Among other stabilizing efforts, AB1 X1 prohibited PUC from increasing rates for usage under 130% of baseline until DWR bond charges are paid off. These restrictions did not apply to customers of publicly owned utilities, about 25% of electricity customers in California. Subsequent legislation(SB 695, Kehoe, Chapter 227, Statutes of 2009) removed the freeze on Tiers 1 and 2 and allowed very limited rate increases.

   On June 28, 2012, PUC initiated a proceeding to examine current residential electric rate design, including the tier structure in effect for residential customers, the state of time variant and dynamic pricing, potential pathways from tiers to time variant and dynamic pricing, and preferable residential rate design. This PUC proceeding is open to the public and allows interested parties opportunities to participate by making comments on PUC rulings, making rate design proposals, commenting on proposals made by others, commenting on proposals made by staff, and commenting on any decision made by PUC. According to the public schedule, final rounds of comments are due mid-summer 2013. This would be followed by a draft decision, which is also open to comments. However, the PUC is limited in the way it can implement changes to rate design because of the statutory restrictions on Tier 1 and 2 rates.

   It is important to make a distinction between *rate design* and the customer's *bill*. Redesigning rates does not necessarily result in a change in the customer's bill. This bill includes language to maintain protections for low income ratepayers to ensure affordable energy bills, regardless of the outcome of redesigning residential electricity rates.

3) Allows PUC to Design Residential Rates. Under current law, rate increase for residential must be disproportionately placed on the price paid for electricity by residential customers whose usage exceeds their Tier 2 allocation. This bill addresses this by removing the restrictions on Tier 1 and Tier 2 rates and including provisions to ensure a transition that will not result in rate shocks. In addition, this bill allows the PUC to approve a fixed charge of up to but no more than $10 or $5 for low-income customers. The bill further specifies that the fixed charge is not to unreasonably impair incentives for conservation or energy efficiency and requires a reasonable transition from current rates to the new rates.

Non-low income customers will continue to fund a number of programs authorized by the Legislature. In addition to CARE, the Legislature has authorized several ratepayer funded programs to assist low income households procure energy efficiency. The Legislature has also authorized that ratepayers fund the development of new technologies and business models. These include the Self Generation Incentive Program (SGIP), the California Solar Initiative (CSI), Energy Efficiency Incentive Programs (EEIP), the Energy Savings Assistance Program and Net Energy Metering.

4) Rate Reform Impacts on Low Income households. Currently, CARE customers are to receive a 20% discount off of their electric and gas bills. However, because of the cap on Tiers 1 and 2, the effective discount can be much higher if CARE customer is using more than 130% of the baseline allocation. In some instances, PG&E has reported providing discounts in the range of 60% off of the otherwise applicable bill. This bill addresses this by limiting the CARE discount to not less than 30% or more than 35% of a non-CARE customer bill.

5) Time of Use Rates. In order to move toward pricing electricity based on its time of use, AB 327 allows the PUC to require the default rate for customers be based on time of use beginning January 1, 2018. It also specifies that the PUC shall ensure that these rates do not cause an unreasonable hardship on senior citizens or economically vulnerable customers in hot climate zones.

6) Net Metering Reform. Current NEM statute allows a utility customer who self-generates using specified renewable technologies to receive a credit on their utility bill, for generation that is not consumed on site, equal to the retail electricity rate in effect at the time the generation occurs. The credits may be used to offset most of the utility bill, including fixed charges and transmission and generation charges. The credit is calculated in a manner that reduces the NEM customer's contributions to public purpose programs such as CARE, energy efficiency and renewable incentives, and research and development programs that other customers pay.

   Amendments made in the Senate establish a transition from the current NEM program to a new NEM program. The PUC may develop the NEM reforms prior to December 2015 and may offer it to customers in areas where the NEM capacity limit has been reached. By July 2017 or when they reach their NEM capacity limits, the electrical corporations must use the new NEM.

   Significant NEM reforms include: the total benefits are approximately equal to the costs to all customers and the electrical system and set a payment equal to the cost and benefits of the renewable generation facility. Additional provisions direct the PUC to ensure customer-sited renewable distributed generation continues to grow sustainably and include specific alternatives designed for growth among residential customers in disadvantaged communities. In addition, the amendments provide that the PUC may authorize charges specific to customers who self-generate, such as demand or other charges.

   Some matters related to sustainable growth may be outside of the control of the PUC with respect to ensuring sustainable growth, such as federal tax rules (tax credits and depreciation) and minimal regulatory requirements, which have also helped spur the growth of customer-sited generation. The current 30% federal tax credit is scheduled to expire in 2016. Federal legislation to allow renewable projects to qualify for Master Limited Partnership tax treatment may also add new growth opportunities. The state's greenhouse gas regulations may also help to increase customer-sited renewable generation, particularly for commercial businesses required to comply with those regulations. Federal law allows NEM credits to be excluded from income but the new NEM could require income tax assessments, depending on its final design. The new NEM may also allow more customers to take advantage of federal depreciation – which is currently limited to commercial customers and third party financing providers. Recent rule changes at the Energy Commission now allow customers to sell the renewable attribute in a compliance market established through the Renewable Portfolio Standard. In addition, current law excludes owners of solar facilities from property tax reassessment. In order to assess whether the changes to NEM will impact the sustained growth of the industry the PUC will need to consider the growth effects of these other programs and ensure that it does not develop sustainability rules to compensate for changes in other programs that are beyond its control.

For customers who are using the current NEM program, this bill establishes a transition to the new NEM. The PUC is to establish a transition period for existing and new NEM customers added prior to July 2017 and adopt rules for this transition. The PUC must consider a reasonable expected payback period based on the year the customer initially took service. Self-generation customers receive an array of support, some of which are described in this analysis. A recent report by the Climate Policy Initiative found that the financial value of bill savings and the sum of only a few of the incentives mentioned above exceed average system prices.[1] The PUC will need to define what is meant by a "reasonable expected payback period" and establish standard assumptions for calculating the payback period, particularly the price paid for the on-site generation because this value varies widely and the price affects payback. In addition, the bill language refers to reasonable payback from the perspective of the utility customer. However, some customers may elect to assign benefits to a third party financier, such as but not limited to tax credits or local rebates. The PUC will need to address how to adjust the reasonable payback period if a customer transfers some of these values to another entity.

7) Fuel Cell NEM. Current law provides a separate NEM in Section 2827.10 specifically for customers who use specified fuel cell technologies and allow the use of nonrenewable fuels. Currently, only one fuel cell manufacturer meets these specifications. Fuel cells that use renewable fuels also included in the NEM statute in 2827. This bill would make the fuel cell NEM available until 2017.

   In addition to the NEM credits fuel cell customers are exempt from nonbypassable charges pursuant to Section 371 of the Public Utilities Code. Customers who use fuel cells also receive a discounted rate for natural gas purchases from gas corporations that the same as the rate charged for natural gas generation facilities.

8) Distributed generation resource plans. AB 327 was amended in the Senate to require electrical corporations to evaluate locational benefits and costs of distributed resources located on their distribution systems. This evaluation shall be based on reductions or increases in local generation capacity needs, avoided or increased investments in distribution infrastructure, safety benefits, reliability benefits, and any other savings the distributed

[1] Improving Solar Policy: Lessons from the Solar Leasing Boom in California, Climate Policy Initiative, July 2013.

resources provides to the electric grid or costs to ratepayers of the electrical corporation. The bill specifies that the electrical corporation propose ways to deploy cost-effective distributed resources and methods of coordination with existing incentives to minimize the incremental cost of the distributed resources and to identify barriers to deployment, including safety standards or reliable operation of the electricity distribution system.

The bill further specifies that the PUC will review and modify or approve the plans to minimize cost and maximize ratepayer benefits.

This provision may help promote increased renewable generation within communities, which could displace procurement for larger central generation facilities.

This provision also includes planning for electric vehicles, which are being studied for both the potential increased demand for electricity and their potential to help increase flexibility in procurement as a storage technology.

9) Renewable Portfolio Standard. Current law prohibits the PUC from requiring electrical corporations to procure renewable energy above the 33% requirement in the Renewable Portfolio Standard. The amendment will allow the PUC to require procurement above the 33% requirement. The PUC usual procurement proceeding is conducted annual in its Long Term Planning and Procurement Proceeding. In this proceeding the PUC determines the least-cost, best fit procurement for each electrical corporation. Costs for electricity generated by some renewable generation facilities are now competitive with conventional natural gas generation. Thus, moving beyond the 33% mandate is possible to do, without adversely impacting electricity rates.

According to the California Independent System Operator, current procurement trends will result in substantial excess generation that could cause reliability problems for customers. In addition, because most of the procurement is using wind and solar technologies, large quantities of backup generation may be needed to generate power quickly when the wind stops blowing or the sun stops shining. Ratepayers will pay for the standby capacity of those generators. One means of addressing the issue could be to for the PUC to increase its consideration of time of deliverability when it authorizes additional renewable procurement. Other types of renewable generation technologies, such as but not limited to biopower (biomass, digester gas, biodiesel, landfill gas, municipal solid waste) or geothermal. An example of concentrated reliance one type of renewable technology can be found in one of the recent compliance reports filed by the electrical corporations. One company reports that it plans to meet its 2020 33% obligation using 63% solar photovoltaic, 33% wind generation, and 3% biopower. The PUC will need to carefully review the deliverability characteristics of those renewable facilities to ensure that procurement is balanced to ensure that the electricity from those facilities will coincide with when electricity is needed.

10) Related Legislation.

AB 792 (Mullin, 2013) would exempt renewable generation and specified fuel cells from utility user taxes imposed by local governments.

AB 796 (Muratsuchi, 2013) would extend a discounted natural gas rate to specified fuel cell technologies.

SB 43 (Wolk) would create a 600 megawatt shared renewable program to allow customers who cannot locate a solar facility on their premises to voluntarily purchase renewable energy through a program approved by the PUC. The renewable facilities are limited in size to enable a developer to place the project as close as possible to the customer. This may include on the distribution line of the electricity corporation.

REGISTERED SUPPORT / OPPOSITION:

Support

Pacific Gas and Electric (PG&E)
Independent Energy Producers Association (IEP)
Clean Power Finance
REC Solar
SolarCity
Sunrun
SunPower
Verengo Solar
Southern California Edison (SCE)
Solar Energy Industries Association (SEIA)

Opposition

Easton Pacific Construction Company
California Large Energy Consumers Association
California League of Food Processors
California Manufacturing & Technology Association (CMTA)

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